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10/757,100	01/14/2004	Robin Plante	R0136.70017US00	2926

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EXAMINER

NGUYEN, TRINH T

ART UNIT

PAPER NUMBER

3644

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/757,100	Applicant(s) PLANTE, ROBIN	
	Examiner Trinh T. Nguyen	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on Amendment dated 5/9/05.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.  
     4a) Of the above claim(s) 20,24-26,30,33 and 35 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22,23,27-29,31 and 32 is/are allowed.
- 6) ☒ Claim(s) 1-19,21 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/14/04 &amp; 6/11/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 11-15, 17, 19, 21, 34 and 36-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Northrop et al. (US 6,460,483) (please see Figure 2 of Northrop et al. attached at the end of this Office Action for further explanation).

For claim 11, Brandon et al. disclose a device for providing drinking water to pets comprising: a base (20) having a tank support and a drinking bowl (26), a water chamber (32) in the base having an inlet (Figure 2) from the bowl, a closed tank (62) disposed on the support and a duct (44, 54, 46, 60) extending from the chamber toward the top of the outer surface of the tank, a pump (56) in the base connected to the duct for pumping water from the chamber through the duct for discharging the water over substantially the entire outer surface of the top of the tank, a gutter (22) about the lower portion of the tank, a passage (70) in the tank communicating with the chamber and a valve (63), means (68) connected to the valve, and a sleeve (70, 82) defining the passage and extending into the chamber with the lower portion of the sleeve positioned to be fully submerged in water in the chamber.

For claim 12, Brandon et al. further disclose a device for providing drinking water to pets comprising: a bowl (26), a water circulation system including a water chamber (32) separate from the bowl and means (Figure 2) enabling water to flow from the bowl to the chamber, a reserve water tank (62, 42), and pump means (56) in the system, said means (24, 28, 30) including the surface.

For claim 13, Brandon et al. further disclose the tank includes a dome (74) and a removable bottom cover (68).

For claim 14, Brandon et al. further disclose a handle (76) is connected to the dome.

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For claim 15, Brandon et al. further the handle provides a support.

For claim 17, Brandon et al. further disclose the pump means is in continuous operation when the tank is in the system.

For claim 19, Brandon et al. further disclose the circulation system includes a duct (60, 44, 54, 46) connected to the pump and extending through the water tank.

For claim 21, Brandon et al. further disclose a drinking bowl interposed in the flow of water between the tank surface and the chamber from which pets can drink water as an alternative from lapping water from the tank surface.

For claim 34, Brandon et al. further disclose a retainer (78) maintains the dome and cover together.

For claim 36, Brandon et al. further disclose a base (20) and a generally dome-shaped tank (42,62) disposed on the base, a water collection chamber (32) in the base, a duct (60, 44, 54, 46) extending upwardly from the chamber and operatively connected to a pump (56), and a passage (28,30) in the tank.

For claim 37, Brandon et al. further disclose a bowl (26) separate from the chamber (32) collects water that flows down the external surface of the tank.

Furthermore, it is noted that the recitations after the term "for" do not further limit to any patentable sense since the recitations are not positive limitations but only require the ability to so perform. It is noted that it is well settled case law that such limitations, which are essentially method limitations or statements of intended or desired use, do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 152 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647; and MPEP 2114 & 2115.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Northrop et al. (US 6,460,483) in view of Simon (US 4,840,143).

Northrop et al. disclose a pet drinking fountain comprising: a base (20) and a water supply tank (42) having a closed generally dome-shaped top (74) disposed on the base and extending upwardly therefrom, a water collection area (32) in the base disposed beneath the tank, a water pump (56) disposed in the collection area and connected to a duct (60, 44, 54, 46), a discharge passage (28, 30) in the lower portion of the tank communicating with the base, and a drinking container (26) in communication with the channel and the collection area from which pets may drink water directed to it from the channel.

Northrop et al. disclose most of the claimed invention except for a channel in the base surrounding the bottom portion of the tank.

Simon teaches a similar pet drinking fountain as that of Northrop et al. in which Simon's fountain having a channel (the channel is located below reference no. 28 in Figure 3) in the base (20) surrounding the bottom portion of the tank (50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the fountain of Northrop et al. so as to include a channel in the base surrounding the bottom portion of the tank, in a similar manner as taught in Simon, so that the tank can be securely attached onto the base.

For claim 2, Northrop et al. as modified by Simon (emphasis on Northrop et al.) further disclose a filter (50). With respect to the location of the filter, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place the filter where it is needed, since it has been held that rearranging parts of an invention involves only routine skill in the art.

For claim 3, Northrop et al. as modified by Simon (emphasis on Northrop et al.) further disclose the duct extends from the pump upwardly through the tank to the top of the outer surface of the dome-shaped top.

For claim 4, Northrop et al. as modified by Simon (emphasis on Northrop et al.) further disclose a portion of the water discharged at the top of the duct flows directly into the drinking container.

For claim 5, Northrop et al. as modified by Simon (emphasis on Northrop et al.) further disclose the pump is continuously driven by an electric motor.

For claim 6, Northrop et al. as modified by Simon (emphasis on Northrop et al.) further disclose the tank is dome-shaped and has a smooth outer surface allowing the water to flow smoothly down toward the base.

For claim 7, Northrop et al. as modified by Simon (emphasis on Northrop et al.) further disclose the drinking container is disposed to the side of the tank.

For claim 10, Northrop et al. as modified by Simon (emphasis on Northrop et al.) further disclose access is provided for the animal to the surface of the tank enabling the animal to lap water flowing down the surface thereof or in the drinking container.

5. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Northrop et al. (US 6,460,483) in view of Simon (US 4,840,143), and further in view of Clark (US 5,259,336).

As described above, Northrop et al. as modified by Simon disclose most of the claimed invention except for a food dish is connected to the base and the food dish is adjacent the drinking container.

Clark teaches a similar pet drinking fountain as that of Northrop et al. as modified by Simon in which Clark's fountain having a food dish (50 or 52) is connected to the base and the food dish is adjacent the drinking container (20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the fountain of Northrop et al. as modified by Simon so as to include a food dish adjacent to the drinking container, in a similar manner as taught in Clark, so as to provide a food dish for the animal.

6. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Northrop et al. (US 6,460,483).

As described above, Northrop et al. disclose most of the claimed invention except for the tank includes valve means for enabling water to flow from the tank to the chamber, means responsive to positioning the tank in the system for opening the valve and means for controlling pressure in the tank for preventing water in the tank flowing out the valve means to the chamber when the valve means is open.

It is noted that Northrop et al. does disclose the use of valve assembly (64, 66, 68, 78, 80, 86) for controlling the ingress and/or egress of water in the tank, which is considered as a valve means functional equivalent to the valve means as claimed by the applicant. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use either Northrop et al.'s valve assembly or applicant's valve means, since to do so would merely replace one old and well known valve means with another art equivalent old and well known valve means so that the ingress and/or egress of water can be controlled more efficiently. Furthermore, it appears that the invention would perform equally well with Northrop et al.'s valve assembly.

7. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Northrop et al. (US 6,460,483) in view of Burns et al. (US 5,799,609).

As described above, Northrop et al. disclose most of the claimed invention except for the duct extends through the tank.

Burns et al. teach a similar pet drinking fountain as that of Northrop et al. in which Burns et al.'s fountain having a duct (66, 70) extends through the tank (58, 60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the fountain of Northrop et al. so as to include a duct extends through the tank, in a similar manner as taught in Burns et al., so as to provide a more efficiently way for the water to travel from one place to another.

#### ***Allowable Subject Matter***

8. Claims 22, 23, 27-29, 31, and 32 are allowed.

#### ***Response to Arguments***

9. Applicant's arguments filed 5/9/05 have been fully considered but they are not persuasive.

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10. Applicant argues that Northrop does not disclose claim 11 (as amended) for a device wherein the water discharges over substantially the entire outer surface of top. It is noted that the recitation "discharging the water over substantially the entire outer surface of the top of the tank" after the term "for" as amended in claim 11 do not further limit to any patentable sense since the recitations are not positive limitations but only require the ability to so perform. Also, it is noted that it is well settled case law that such limitations, which are essentially method limitations or statements of intended or desired use, do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 152 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647; and MPEP 2114 & 2115. It is noted that if the pump is to operate at a higher power/level then the pump is capable of pumping and discharging the water over the entire outer surface of the top of the tank due to the overflow of water.

11. Applicant further argues that Northrop does not disclose claim 12 (as amended) for a tank having a substantially smooth dome-shaped top and for the water being discharged onto the upper portion of the top causing water to flow over the full surface of the top. It is noted that the recitation "discharging water from the chamber onto the upper portion of the dome-shaped top causing water to flow down over the full surface of the dome-shaped top" after the term "for" as amended in claim 12 do not further limit to any patentable sense since the recitations are not positive limitations but only require the ability to so perform. Also, it is noted that it is well settled case law that such limitations, which are essentially method limitations or statements of intended or desired use, do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 152 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647; and MPEP 2114 & 2115. It is noted that if the pump is to operate at a higher power/level then the pump is capable of pumping and discharging the water over the full surface of the dome-shaped top due to the overflow of water.

12. Applicant further argues that the function of Simon's channel is not taught for the water spilling into the channel. It is noted that the recitations "directing water in the area to the upper portion of the tank" and "causing water from the duct to spill down essentially unrestricted over the outer surface of the



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tank and into the channel" after the terms "for" as amended in claim 1 do not further limit to any patentable sense since the recitations are not positive limitations but only require the ability to so perform. Also, it is noted that it is well settled case law that such limitations, which are essentially method limitations or statements of intended or desired use, do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 152 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647; and MPEP 2114 & 2115. It is noted that Simon's channel is capable of retaining/storing some water if the water is spilled down over the outer surface of the tank.

### ***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh T. Nguyen whose telephone number is (571) 272-6906. The examiner can normally be reached on M-F (9:30 A.M to 6:00 P.M).

The examiner's supervisor, Teri Luu can be reached on (571) 272-7045. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Trinh T. Nguyen  
Primary Examiner  
Art Unit 3644

7/15/05